

Dear Dr. Movassaghi:

During the public meetings of the Mississippi River Commission held in Greenville, Mississippi, and Morgan City, Louisiana, on August 21 and 23, 2001, respectively, Messrs. Clyde Martin and Edmond Preau presented comments on areas of concern to your office. Also submitted for the record was a formal report that expresses the views of your office and recommends improvements and continuing work on the Mississippi River and Tributaries (MR&T) flood control project. The responses below follow the order of topics in the submitted formal report with a few additional topics in the statements addressed at the end of this letter.

SOUTHEAST ARKANSAS LEVEE DISTRICT

(1) The Mississippi River Commission recognizes the importance of the south bank Arkansas River levee system.

Arkansas River

(2) The Vicksburg District will continue to make periodic inspections of this area. Should conditions develop that threaten the levee, necessary measures will be taken to protect the levee. In addition, be advised that field staff routinely conduct pre- and post-flood inspections to look for slides, scour, or other problems.

Levee Enlargement and Berms, Mississippi River

(3) Currently the Vicksburg District has no ongoing construction in the Southeast Arkansas Levee District.

Approximately 20.6 miles of levees and associated berm remain to be constructed. These levees need to be raised by 1 to 2 feet. Priority at this time is being given to those areas with the greatest need.

FIFTH LOUISIANA LEVEE DISTRICT

Levee Enlargement and Berms, Mississippi River

(4) The Commission acknowledges the efforts of the Fifth Louisiana Levee District, state elected officials, Louisiana Department of Transportation and Development, and the Louisiana Congressional delegation in Washington who have worked together to obtain the necessary funding to support the enlargement of the Mississippi River Levees.

The funding received by the Vicksburg District has been sufficient in recent years to complete those projects on which rights-of-way and design have been completed. Although funds were exhausted in the summer of 2000 due to the extremely long construction season, the contractors did continue to work and were paid with Fiscal Year 2001 funds. Based on funding levels from both the House and Senate, the Corps anticipates sufficient funds to accomplish the construction planned for Fiscal Year 2002.

As part of the Supplemental Environmental Impact Statement on the Mississippi River Levees, the Corps evaluated several avoid and minimize techniques to reduce impacts to the environment. Some of the techniques, such as relief wells, reduce not only damage to bottomland hardwoods, but also the amount of rights-of-way required by the local sponsor. Another technique, such as locating borrow in farmland, does require the sponsor to provide more expensive land; however, this avoids damage to bottomland hardwoods and thereby reduces the amount of compensatory mitigation. In summary, the Corps is committed to working to minimize environmental impacts, but at the same time, recognizes the rights-of-way implications with the local sponsor.

The Vicksburg District will be working with the Southeast

Arkansas Levee District to begin the proposed raise of 20 miles of levees in the state as soon as the raising of other priority levee areas in Louisiana and Mississippi is completed.

Tensas River Project

(5) The Fifth Louisiana Levee District continues efforts to resume maintenance of the Tensas River. From the project maintenance standpoint, the Corps encourages and supports these efforts.

Certain aspects of the project are subject to regulatory requirements under Section 404 of the Clean Water Act. For example, the discharges of dredged and fill material (movement of soil, cutting and filling as dirt and debris are removed) associated with mechanized (use of heavy equipment such as a dozer, backhoe, track hoe, etc.) land clearing (pushing over and/or removal of trees and other vegetation, windrowing, piling, root raking, sloping the natural ground surface for ease of future maintenance) is regulated under Section 404 of the Clean Water Act. The loss of wetland functions and values associated with this regulated work requires compensatory mitigation in accordance with the 1990 Memorandum of Agreement between the Corps and the Environmental Protection Agency on mitigation.

(6) The Commission has not been informed that the Fifth Louisiana Levee District is still interested in Phase II of the Tensas River project. In addition to the inability of the levee district to fund its share of the costs, there have been a number of environmental concerns which would impact completion of the project. However, the Commission recognizes the levee district's concerns for flood protection, water supply, and environmental needs while also desiring a project which will optimize the use of water to meet the area's needs.

While there is authority to conduct a study of the multiple needs of the area, there are no funds for such a study. The levee district has petitioned its Congressional delegation to have funds added by Congress in Fiscal Year 2002. If these funds are not added, consideration will be given for including a request for funds to initiate this study; however, approval of funding, as well as initiation of this study, will be based upon national funding priorities.

Red River Backwater Area

(7) The Corps stands ready to construct the remaining

6,500 feet of levee enlargement once the Fifth Louisiana Levee District makes the rights-of-way available.

Mississippi River Above Old River, Channel Improvement

(8) Thank you for your comments regarding the importance of the Mississippi River channel stabilization work. The Corps closely monitors and stabilizes the river channel as required to achieve the maximum flood control and navigation benefits. To ensure project success, maintaining existing channel improvement structures is just as important as their construction. Therefore, the Corps will continue to give the maintenance portion of the MR&T project high priority during the annual budgeting process.

TENSAS BASIN LEVEE DISTRICT

(9) Construction of the Boeuf River and Tributaries project was underway when all work was halted as a result of the 1977 Presidential review of Corps projects. (The channel from mile 0 to mile 39.1 was enlarged to provide additional flood protection before construction was stopped.) As a result, the project had to be reevaluated before construction could be resumed. A draft reevaluation report was prepared and three public meetings were held in December 1984. The tentatively selected plan included completion of the authorized channel enlargement on Big and Colewa Creeks to mile 71.5 and on Bayou LaFourche from mile 0 to mile 28.2, in combination with flowage easements along the lower 27 miles of Boeuf River to compensate for the effects of the channel work upstream. Support for this plan was strong in the upper reaches, and opposition was intense in the lower reaches.

The study was terminated in May 1985 following the decision of the sponsor, the Tensas Basin Levee District, to withdraw sponsorship and has remained inactive since that time. Before the Corps of Engineers could resume any construction on this project, significant studies would have to be performed due to the numerous changes in laws and policies, particularly in the environmental arena, since the original reevaluation study was performed. Additionally, a project sponsor would have to be identified and would be required to cost share any resulting feasibility studies and construction. The Corps currently has

no indication of a willingness on the part of any governing body to serve as the project sponsor, and therefore there are no plans to conduct further studies or construction at this time.

Sicily Island

(10) Construction is currently underway on Levee Items 1C and 1D of this project. In addition, the Vicksburg District awarded the construction contract for the Billys and Falcon Bayous plugs on August 10, 2001. This is the last construction contract. Based on current construction schedules, the District should complete the Sicily Island Area project in April 2002, barring unforeseen delays.

Ouachita River Levees

(11) After many years of working with your agency and the Tensas Basin Levee District, the Corps appreciates the need for completion of the Ouachita River Levees, Louisiana, project. The remaining unfunded items of work include levee enlargement of Items 2 and 3 in the Bastrop to Monroe reach of the east bank levee and resurfacing of the Monroe to Sandy Bayou reach of the east bank levee. While no funds were included in the President's Budget for Fiscal Year 2002, the Senate Report included \$1,500,000 for the continuation of these items. In addition, consideration will be given to your request for funds to complete this project in future budget cycles. As you are aware, receipt of funds will ultimately be based upon national funding priorities.

Ouachita-Black Rivers Bank Stabilization

(12) The Corps recognizes that bank stability continues to be a problem along the Ouachita River. The Corps does have the authority to study the bank stabilization needs and assess the magnitude of these needs. However, there is insufficient funding for such a study. The Senate Report for Fiscal Year 2002 included \$100,000 for a study to "assess bank caving locations. . . and to prepare an evaluation report identifying and prioritizing the most critical locations." If funding is received, the Corps will initiate the study.

RED RIVER, ATCHAFALAYA AND BAYOU BOEUF LEVEE DISTRICT

Lower Red River, South Bank Levees

(13) The \$7.7 million contract for the replacement of

the Bayou Rapides Pumping Plant is under construction, with a scheduled completion date of February 2003.

Alexandria to the Gulf of Mexico Study

(14) It appears that the first phase of this study, which will address flooding problems in the Alexandria area, will begin early in Fiscal Year 2002. The issue related to state and local governments committing future appropriations has been resolved, and the deviation to the disputes provision has been approved by the Headquarters, U.S. Army Corps of Engineers. The Corps anticipates execution of a cost-sharing agreement with your agency and the Gravity Drainage District No. 1 of Rapides Parish in December 2001 and initiation of the study in January 2002.

ATCHAFALAYA BASIN LEVEE DISTRICT

Lower Atchafalaya Basin Reevaluation Study

(15) Recommendations for the riverfront businesses are included in the preliminary Lower Atchafalaya Basin Reevaluation (LABR) draft report that will be submitted to the Commission in December 2001. Recommendations will be evaluated with respect to all laws, policies, and guidance.

The LABR report recommends that the barrier levee be constructed to the 100-year hurricane elevation in order to protect the Federal project. However, this is outside the MR&T authority and may require a non-Federal sponsor to cost share the difference between MR&T responsibility and the 100-year hurricane protection.

An intense monitoring program will improve the management capabilities of the basin, and the Corps looks forward to a continued partnership in this effort.

During the course of the LABR study, it was determined that the two outlets have reached a state of cross-sectional equilibrium. Therefore, any modifications (enlargement) to either outlet will cause it to quickly return to the original cross-sectional area, thereby providing no long-term benefits.

As a result of several requests by members of the

Leadership Group, the review period was extended to permit their review of the technical appendices. The technical appendices are currently being developed and will be forwarded to all the appropriate parties as soon as they become available.

Protection Levees, Atchafalaya Basin

(16) The Corps continues to pursue levee construction as a high-priority item in the overall MR&T funding appropriations. Major levee deficiencies exist in the area west of Berwick. In the recent past, significant construction progress has been made in this area, and there are currently three additional contracts that have been advertised for bids.

These contracts will be awarded in the November and December 2001 timeframe. Where sufficient borrow material is not available, uncapped sheetpile floodwalls will be constructed to achieve the desired design grade. The overall design effort is to continue in earnest into Fiscal Year 2002. If the Corps receives additional funds to award additional contracts next fiscal year, the work will be advertised at the earliest possible date.

(17) The LABR report has indicated that the levees near Morgan City will need to be raised an additional 2 feet; however, the 2-foot rise is not required for 50 years. The Corps will continue to develop solutions to improve the situation.

Main Channel, Atchafalaya River

(18) The preliminary LABR draft report recommends that the feasibility study for the jetty be included in the Louisiana Coastal Area Ecosystem Restoration project. The purpose of the feasibility study is to assess the potential for implementing this feature as an ecosystem restoration measure. Currently, the Louisiana Department of Natural Resources (LADNR) is participating with the New Orleans District as the non-Federal cost-sharing sponsor to pursue this study. Development of a project study plan for this effort is scheduled for completion in January 2002.

(19) The Atchafalaya River and Bayous Chene, Boeuf, and Black Reconnaissance Study is scheduled for completion in December 2001. In this study, the Corps is addressing the feasibility of deepening the navigation project to depths of up to 35 feet, based on navigation benefits. If the conclusions of this preliminary analysis are that a deeper

channel is economically justified and environmentally acceptable, the Corps will proceed to the more detailed feasibility studies to further develop the plan.

Revetments, Atchafalaya River

(20) The Corps annually surveys over 275 miles of revetted banks on the Mississippi River and over 50 miles on the Atchafalaya River looking for scouring banks. As in the past, maintenance of the revetted bank will be continued in order to protect the levees and maintain navigable waterways.

TERREBONNE TIDEWATER MANAGEMENT
AND CONSERVATION DISTRICT

Morganza to the Gulf of Mexico

(21) Headquarters, U.S. Army Corps of Engineers, granted permission to release the draft Feasibility Report and Environmental Impact Statement for public review on October 30, 2001.

The public review period is scheduled to begin November 16, 2001, and conclude January 16, 2002. The Chief of Engineers' Report is scheduled for June 2002.

(22) Preliminary evaluation of a channel depth of -20 feet NGVD in the Houma Navigation Canal indicates that the project, with a benefit-to-cost ratio of approximately 2 to 1, is economically justified. The New Orleans District will initiate a navigation study with Louisiana Department of Transportation and Development to investigate the proposed action in greater detail. The study schedule is being developed by the team to coincide with detailed design of the lock. The navigation lock design is currently proceeding with a sill depth of -20 feet NGVD. If construction is authorized, the first construction contract will be ready for award by June 2004.

PONTCHARTRAIN, LAFOURCHE BASIN, ORLEANS, WEST JEFFERSON,
EAST JEFFERSON, LAKE BORGNE, GRAND PRAIRIE, BURAS,
PLAQUEMINES WEST BANK, SOUTH LAFOURCHE,
AND ATCHAFALAYA BASIN LEVEE DISTRICTS

(23) The Commission shares your beliefs regarding the importance of levee and revetment projects to protect these very important metropolitan and commercial areas. Bank monitoring will continue to prevent levee setbacks and

economic disruptions in this vital area of the state.

Mississippi River Below Old River, Below Grade Mississippi River Mainline Levees

(24) Work on levees has progressed at a significant pace to ensure that over 97 percent of the Mississippi River Levees are to grade and section. The remaining work items as to freeboard and cross sections will be constructed in the near future.

Mississippi River Below Old River, Channel Improvement

(25) The Corps annually surveys over 275 miles of revetted banks on the Mississippi River looking for scouring banks. As in the past, maintenance of the revetted bank will be continued in order to protect the levees and maintain navigable waterways.

(26) The high-water ferry landing at Angola was constructed within a point bar. Surveys indicate that the point bar above the ferry landing, as well as the bar surrounding the dike field at Smithland Crossing, has grown. A comparison of the 1997 and 1992 hydrographic surveys indicates that 20 feet of shoaling has occurred on the point bar between miles 300 and 303. This same trend has been seen elsewhere on the river between miles 326 and 217 and is likely a result of the 1997 flood. The Mississippi River remains dynamic and the shoaling that is occurring at the ferry landing is natural and is expected to continue. The New Orleans District will continue monitoring to ensure the safety of the ferry crossing at Angola.

(27) The New Orleans District is aware of the concerns of the navigation industry and will continue to study the impacts of the soft dikes on the river and navigation. Since the construction of the dikes at Medora, additional monitoring of the soft dikes has been done, and findings will be completed by February 2002.

Donaldsonville to the Gulf of Mexico Study

(28) All parties are eager to sign the Feasibility Cost-Sharing Agreement and start work on the project. The Corps

anticipates that the Feasibility Cost-Sharing Agreement will be executed by the parties in November 2001 and that work will commence on the study in December 2001.

LOUISIANA STATE PENITENTIARY LEVEE AT ANGOLA

(29) The Commission believes that the Louisiana State Penitentiary Levee project has been a success story. The Corps received outstanding cooperation from all concerned agencies throughout the design and construction effort. Three construction contracts were awarded in September 1999, just 2 years after the design process was initiated. The project was prosecuted on a fast track, which could not have been accomplished without such outstanding cooperation. The final construction contract was awarded in April 2001 for the levee enlargement downstream of Camp C. Project completion is scheduled in Fiscal Year 2003, only 6 years after approval to proceed. Sufficient Federal and non-Federal funds are budgeted to support the estimated contract earnings through project completion.

OLD RIVER CONTROL STRUCTURE

(30) Public Law 101-646 provides authority for the Corps of Engineers to investigate the distribution of flow as regulated by the Old River Control Complex. At this time, however, the Corps has not been provided funding. Should any studies be directed and funded, the Corps, through its long involvement in multi-use project analysis, is cognizant of the need to examine and evaluate the effects on all water resources activities that would result from modification to the established flow distribution. The Corps' multiple missions require that flood control, navigation, the environment, and other water resources related activities all be considered and supported in a consistent and uniform manner.

At an early Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) Task Force meeting, Mr. James Tuttle, former Chief of Engineering with the Lower Mississippi Valley Division, gave a presentation on the Mississippi/Atchafalaya system at the request of the CWPPRA Task Force. Mr. Tuttle indicated the difficulties in designing a sediment diversion mechanism since the flow and sediment within the system do not move in constant proportions. He agreed that there are good

reasons for increasing the flow in the Atchafalaya River, but he advised the Task Force that a number of problems would result. Such problems include a decrease in the flood flow capacity of the Mississippi River, problems to the shipping industry caused by more flow and sediment in the Atchafalaya River, and an

increase in flood profiles on the Atchafalaya with continued development of the delta. In addition, he noted that despite more than 30 years of monitoring and analyses, knowledge of this dynamic system is not adequate enough to predict with confidence how it would react to a change in distribution.

MISSISSIPPI RIVER SHIP CHANNEL - BATON ROUGE TO GULF

(31) The New Orleans District is continuing with coordination efforts with the Department of Transportation and Development and with Plaquemines Parish to complete the mitigation requirements of this project. The contract to complete the expansion of the Belle Chasse Water Treatment Plant is nearly finished. Work on the Phase III study is continuing. Because of the proposed change in cost sharing outlined in the "National Dredging Needs Survey of Ports and Harbors," the District will not finalize work on the Phase III study. The District staff has discussed this matter with representatives of the Department of Transportation and Development and they concur.

ENCROACHMENTS WITHIN FLOODWAYS

(32) The Commission concurs with the levee boards and the Louisiana Department of Transportation and Development that encroachments on the floodplain are a major concern. With respect to fill on the batture, it has been New Orleans District's policy to generally limit the amount of fill to 1 foot above the existing batture elevation, whenever possible. This excludes sand stockpiling operations which are considered temporary operations and which are subject to be degraded at the direction of the District Engineer if it is determined during a flood event that the operation is detrimental to the integrity of the flood protection system. When a copy of a permit request by a levee district for fill on the batture is received for review, the New Orleans District includes a stipulation in the letter of no objection back to the appropriate levee district stating that the applicant must limit the amount of fill placed on the batture to 1 foot. However, the District evaluates each permit request on a case-by-case basis.

On certain occasions, the New Orleans District has made

exceptions to allow an applicant to install fill above the 1-foot limitation when it has been determined that the additional fill will not adversely impact the integrity of the flood protection system.

HURRICANE PROTECTION PROJECTS

(33) The New Orleans District has initiated work on the reconnaissance study and plans to complete its report by July 2002. The initial focus has been on the east bank of Jefferson Parish in order to utilize currently available information and thereby reduce the study time and cost. The District will be working closely with the Louisiana Department of Transportation and Development in the development of a plan to provide protection from Morgan City to the Mississippi state line.

(34) There are several locations where foreshore protection has been provided to protect hurricane protection levees. If additional protection is needed, the District will evaluate each location based on the authorization of each project.

(35) Crown surfacing has generally not been included in hurricane protection projects. The addition of foreshore protection and crown surfacing could require revision to the authorization of the individual projects.

MISSISSIPPI RIVER GULF OUTLET

(36) The Corps is conducting a reevaluation study of the possible modification of the Mississippi River Gulf Outlet project. The study includes navigation, hurricane protection, and ecosystem restoration features. Alternatives being investigated include navigation channel depths of 12, 16, and 20 feet, in lieu of the currently authorized 36 feet; relocations of facilities; hurricane protection; and wetland restoration. The study is 100 percent Federally funded. A salinity model was recently completed. A regional economic analysis was performed, and the report is currently under review by the Corps and the Navigation Industry Committee. The original completion date for the study was September 2002; however, the additional ecosystem and environmental features, some of which are yet to be determined, will lengthen the completion date. The completion date will be determined once all the environmental tasks are identified.

FRESHWATER DIVERSION AND COASTAL STUDIES

(37) The current operational plan for the Caernarvon Freshwater Diversion structure actually diverts water at a rate that is less than the original diversion rate. The reduced flow

rate has produced excellent results. Rigorous monitoring of the project by the Louisiana Department of Natural Resources, Coastal Restoration Division, since 1988 has shown that the project has enhanced emergent marsh vegetation, reduced marsh loss, and significantly increased commercial and recreational fisheries and wildlife productivity. Monitoring data show that freshwater marsh plants increased over seven times, brackish marsh plants increased by almost 50 percent since operation of the structure began, and the amount of salt marsh vegetation has decreased by more than half. Caernarvon has helped to reduce marsh loss as well. Results show a net increase in marshland of about 5.9 percent per year.

(38) The diversion of freshwater by the Davis Pond project is scheduled to be capable of operation by December 2001; however, resolution of outstanding oyster relocation issues may delay initiation of diversion operations. Positive results similar to those for the Caernarvon project are expected.

(39) Until a consensus on a mutually acceptable plan is reached, the proposed Bonnet Carre Freshwater Diversion project will remain in an inactive status.

(40) While efforts have been made to accommodate short-term increases in the distribution of flow into the Atchafalaya River for fisheries enhancement and to counter the "Brown Marsh" phenomenon, the CWPPRA authority in question has not been formally acted on. As noted in paragraph 30 above, while the CWPPRA legislation provides the Corps an authority to undertake investigations for modification of flow redistribution, it does not provide specific funds for this effort. There are a number of studies which have investigated or are investigating the flood control, navigation, and environmental aspects of both the Mississippi and Atchafalaya Rivers. In all cases, the sensitivity of study alternatives to potential redistribution of the flow at the Old River Control Complex is taken into account.

(41) The New Orleans District is currently preparing the draft feasibility report for the wetland creation and

restoration component of the Barataria Basin Feasibility Study. It is anticipated that the required reviews and approvals will take place in a time frame that will allow inclusion of this component in the Water Resources Development Act (WRDA) of 2002. With respect to the barrier shoreline component, the Corps will not

be in a position to meet WRDA 2002 submission; therefore, submission of this component will be pursued in WRDA 2004. At this time, the New Orleans District anticipates Fiscal Year 2002 activities to include (a) completion of the wetland creation and restoration component of the Barataria Basin Feasibility Study, (b) completion of the barrier shoreline restoration component of the Barataria Basin Feasibility Study, and (c) development of project study plans for the following efforts: Mississippi River delta management study; comprehensive coast-wide ecosystem restoration study; and Atchafalaya Basin restoration study.

GEOGRAPHIC INFORMATION SYSTEMS

(42) The Commission agrees that Geographic Information System (GIS) data aids the Louisiana Department of Transportation and Development, the Corps, and many others in efforts to meet our missions and ultimately save money and provide benefits to many users. The New Orleans District continues to update and develop its own GIS, providing geospatial data to its staff and others through its Enterprise GIS initiative. Additionally, the District continues to support and assist many of the local communities within the District's area in developing their own GIS that is portable to other users. The continued development, use, and maintenance of GIS are strongly supported by the District, and the Commission supports these initiatives.

ABILITY TO PAY

(43) The Commission will continue to support the Ability to Pay provisions and guidelines that are promulgated by the Administration.

POLICY ISSUES

(44) Much of the language contained in project cooperation agreements (PCAs) and other cost-sharing agreements are dictated by the statutory authorization of the project and by other Federal laws and regulations. When a provision is required by Federal law or regulation, the Corps is not authorized to agree to proposed changes offered by a

non-Federal sponsor. Those changes can only be implemented as a result of Congressional action as witnessed when Congress enacted Section 371 of WRDA 1999, altering the cost-sharing responsibility for highway relocations for the Comite River Diversion project, Amite River

and Tributaries, Louisiana. Some provisions in the PCA are a matter of Corps policy and may be the subject of negotiation.

Negotiability of the provision often depends on determinations regarding applicability to other projects and whether that is an appropriate precedent.

Citing PCAs, feasibility cost-sharing agreements (FCSAs), and preliminary engineering and design cost-sharing agreements (Design Agreements), your office asserts that although "project life" is limited to 50 years, the agreements are for eternity and are very open-ended.

You are reminded that the model agreements contain provisions as to termination of the agreement. Due to the Federal investment in the project, the termination provisions operate to protect the Federal investment in the project. For example, the model FCSA does not constitute an open-ended agreement, nor is it intended to be a long-term agreement. The model FCSA presents many opportunities for the non-Federal sponsor to terminate the agreement. Article X of the model FCSA provides that the FCSA automatically terminates at the end of the "study period," which is defined in Model Article I.D. as being the point in time that the Assistant Secretary of the Army for Civil Works presents the feasibility report to the Office of Management and Budget. The model agreement further provides two additional opportunities to end the FCSA agreement. Model Article II.E. allows the sponsor to establish a cost cap that can result in termination of the agreement when contract award or in-house work would cause the cumulative obligations of the Government and sponsor to exceed the cost cap, resulting in excess study costs. Finally, and most importantly, Model Article X permits either party to terminate the agreement upon 30-day written notice.

Another example is the "Single Purpose Structural Flood Control (SFC) Model PCA" dated March 2001. Both this agreement and the Model Design Agreement may include a provision which allows the sponsor to establish a voluntary cost cap that could result in termination of the PCA or Design Agreement by the non-Federal sponsor when a contract award would cause the cumulative obligations of the Government and non-Federal sponsor to exceed the cost cap. The Model Design

Agreement's voluntary cost cap provision (Model Article II.A.3.) is also triggered if continuation of the design using the Government's own forces would result in cumulative financial obligations for design that exceed the

designated voluntary cost cap. Both models provide that when conditions occur that trigger the voluntary cost cap provision, the Government and non-Federal sponsor agree to defer award of that contract and all subsequent contracts until such time as the Government and the non-Federal sponsor agree to proceed with further contract awards. (In the case of the Model Design Agreement, both parties must also agree to proceed with further design utilizing Government hired labor.) Both model agreements limit the deferral period to 3 years; however, the Assistant Secretary of the Army (Civil Works) may make a written determination that contract(s) award (and/or continuation of design with Government hired labor) must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

With all agreements, there is a standard model provision that allows for termination of the agreement in the event hazardous substances are discovered. Additionally, either the non-Federal sponsor or the Government may elect to terminate the agreement or to suspend future performance on or after 60 days from the date it receives notice that the Government has failed to receive its annual appropriation from Congress.

The Water Resources Development Act of 1986, Public Law 99-662, Section 103, established the cost-sharing obligations for the construction, operation, maintenance, repair, replacement, and rehabilitation of a project for flood control and other purposes, and the requirement for entering into an agreement with a non-Federal governmental entity. Unless the original Congressional authorization limits the duration of a project, project activities and the Federal and non-Federal responsibilities under the project cooperation agreement are required by Federal law to continue until such time as Congress formally deauthorizes the project or amends the statutory authority therefor. The "project life" concept is utilized by the Government in its decision documents as a part of the benefit/cost analysis that is performed to determine the economic feasibility of the project. It is not determinative of the duration of the public's need for the project, nor does it create any legal obligations or responsibilities to the extent and duration of the non-Federal

sponsor's statutory cost-sharing obligation on behalf of the project.

(45) You are correct that the SFC Model PCA was amended after passage of WRDA 2000 to include a new provision regarding floodplain management. Based on information obtained from the New Orleans District, our understanding is that Article II.K. of the SFC Model PCA is the addition that is of concern to your office. The language contained in Article II.K. is virtually a direct quote of the statutory requirements applicable to all non-Federal sponsors of a Federal project for local flood protection or for hurricane or storm damage reduction. These requirements originated in Section 402 of WRDA 1986, Public Law 99-662. As codified in 33 USC 701b-12, the statutory requirement, in pertinent part, is as follows:

"Section 701b-12. Floodplain management requirements

"(a) Compliance with floodplain management and insurance programs

"Before construction of any project for local flood protection, or any project for hurricane or storm damage reduction, that involves Federal assistance from the Secretary, the non-Federal interest shall agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

"(b) Floodplain management plans

"Within 1 year after the date of signing a project cooperation agreement for construction of a project to which subsection (a) of this section applies, the non-Federal interest shall prepare a floodplain management plan designed to reduce the impacts of future flood events in the project area. Such plan shall be implemented by the non-Federal interest no later than 1 year after completion of construction of the project..."

Since Federal statute requires that the non-Federal sponsor must agree to participate in and comply with applicable Federal floodplain management and flood insurance programs and to prepare and implement a floodplain management plan, the Corps lacks authority to waive these requirements in

the PCA. Although the recent amendment contains a more express and clear statement of the non-Federal responsibility, past generations of the SFC Model PCA have stipulated in Article XI that the non-Federal sponsor

shall comply with all of the requirements of Section 402 of WRDA 1986, Public Law 99-662, as amended. Therefore, the requirement applies with equal force to non-Federal sponsors who executed previous generations of the SFC Model PCA. In the absence of Congressional action, the non-Federal sponsors for Federal flood protection and hurricane or storm damage reduction projects will continue to be responsible for the floodplain management requirements of Section 402 of WRDA 1986, as amended.

This issue was initially raised in the New Orleans District by representatives of the Louisiana Department of Transportation and Development in the negotiation of the Comite River Diversion project, Amite River and Tributaries, Louisiana. The issue, as to authority for floodplain management responsibilities, was resolved in June 2001 by acceptance by Headquarters, U.S. Army Corps of Engineers, of a legal opinion prepared by the General Counsel for the Amite River Basin Commission (ARBC), the sponsor for floodplain management for the project. It is our understanding that ARBC has obtained Cooperative Endeavor Agreements from a number of local governments within the project benefit area who have the necessary implementation and enforcement authority. Also, we understand that the PCA was executed by all parties in October 2001.

The primary purpose for the Corps' review of the real estate agreements acquired by non-Federal sponsors is to give the United States adequate guarantee in its significant investment. The situation is not dissimilar from that of a lending institution. If one were obtaining funding for a construction project, the lending institution would want to review all title instruments to verify sufficient rights in the borrower before authorizing the funding. Given the substantial investment by the United States, the Corps has an obligation to the taxpayers to substantiate that the investment is safe.

If the non-Federal sponsor does not acquire sufficient right-of-way, quite often the solution is not just remedying the acquisition. Frequently, the imminent threat of suit and of substantial project delay requires the project to come up

with costly reengineering and reconstruction solutions. Not only are there substantial cost increases under these circumstances, but delays to the project that are not borne solely by the non-Federal sponsor also arise.

In short, the review by the United States of the non-Federal sponsor's right-of-way acquisition is consistent with professional real estate practice. It is the way real estate activity is practiced in the private sector, and the reason is that it makes sense, saves money, and saves time. If the non-Federal sponsor has performed the real estate acquisition process correctly, the Government's review is cursory, and it adds little or nothing to the cost or schedule of the project.

The following paragraphs contain the Commission's responses to additional comments given during the oral statements at both public meetings on behalf of your office and were not included in the formal report.

Value of MR&T and Flood Control to Louisiana and the Nation

The Commission agrees that flood protection is vital to Louisiana and the nation. The Mississippi and Atchafalaya Rivers are vital transportation routes for goods that are produced in the interior of the nation and also to transport oil products and other goods into the United States. Many products, especially oil related, are produced in the region for national consumption. Flood control projects allow these activities to be performed during flood events without interruptions. Under the auspices of the MR&T, the Corps, working with local sponsors and levee boards, has built approximately 1,500 miles of MR&T levees and floodwalls during the last 73 years in the New Orleans District alone. Roughly 512 miles of earthen levees and concrete floodwalls line both banks of the Mississippi River.

To the west, approximately 449 miles of levees line the Atchafalaya Basin Floodway, for a total of 961 miles. The MR&T projects protect 1.9 million people and more than 8 million acres. The \$12.7 billion investment has prevented over \$244 billion in flood damages.

Louisiana has been struck by more than 160 hurricanes in the past 400 years. The Corps started work on hurricane protection levees 1 month after Hurricane Betsy struck in 1965. The Corps' hurricane protection projects total \$1.4 billion.

The New Orleans District is also helping local officials solve a third type of flood control problem, urban flooding. This enormous undertaking is expected to total \$605 million

to design and construct features to reduce urban flooding from excessive rainfall in the parishes that surround Lake Pontchartrain. Construction of currently approved features in Jefferson and Orleans Parishes is expected to be complete in Fiscal Year 2004.

The Commission agrees that there is still work remaining to complete the MR&T projects in Louisiana. To date, approximately 97 percent of the Mississippi River levees, 93 percent of the Atchafalaya River levees, and 95 percent of channel improvements are complete. The Corps is actively pursuing project completion within current and future priority and funding allowances.

Fiscal Year 2002 Budget

The Commission shares your concerns about the need to fund the Mississippi River and Tributaries project to its full capability. As you have stated, the President's Budget submission for Fiscal Year 2002 is \$280 million, and the House and Senate have approved \$346 million. The Commission acknowledges the testimony you provided to the House and Senate Appropriation Subcommittees and has expressed capability to support additional funds if appropriated by the Conference Committee.

Corps of Engineers Reform Act of 2001

The Commission has been following with interest proposed legislation on the Army Corps of Engineers Reform and Community Relations Improvement Act of 2001. This proposal resulted from criticism the Corps received from some groups about how projects are formulated and coordinated. As a result of such comments, the Corps has already responded in several ways. The Corps continues to refine its methods used to evaluate economic and environmental impacts of projects, has updated and improved planning guidance to include more emphasis on environmental sustainability, and is evaluating the review of planning reports and public participation. The Corps has results of two National Academy of Science reports on Corps processes that are helping in these evaluations. Ultimately, the Corps believes that these initiatives effectively address the concerns that resulted in the proposed

legislation. The Commission understands your concerns about proposed increases in cost sharing and will continue to monitor proposed legislation in that area.

The Commission appreciates receiving the views of the Louisiana Department of Transportation and Development and looks forward to hearing from you or your representatives at our future public meetings.

Sincerely,

Edwin J. Arnold, Jr.
Brigadier General, U.S. Army
President, Mississippi River
Commission